APPENDIX A

OPINION

SUPREME COURT OF ILLINOIS

United States of America

State of Illinois)
) ss.
Supreme Court)

At a Term of the Supreme Court, *begun and held in Springfield, on Monday, the* ninth *day of* November *in the year of our Lord, one thousand nine hundred and* eighty-one , *within and for the State of Illinois.*

PRESENT: JOSEPH H. GOLDENHERSH, CHIEF JUSTICE
JUSTICE ROBERT C. UNDERWOOD
JUSTICE HOWARD C. RYAN
JUSTICE THOMAS J. MORAN
JUSTICE DANIEL P. WARD
JUSTICE WILLIAM G. CLARK
JUSTICE SEYMOUR SIMON

TYRONE C. FAHNER, ATTORNEY GENERAL

LOUIE F. DEAN, MARSHAL

ATTEST: CLELL L. WOODS, CLERK

Be It Remembered, *that afterwards, to-wit, on the* 18th *day of* December, 1981 *the opinion of the Court was filed in said cause and entered of record in the words and figures following, to wit:*

Donald Peters, et al.,

Appellees

No. 54544 vs.

Health and Hospitals Governing Commission, et al.,

Appellants

Appeal from Appellate Court First District

CLELL L. WOODS
CLERK OF THE SUPREME COURT
STATE OF ILLINOIS

Docket No. 54544 — Agenda 54 — September 1981.

DONALD PETERS *et al.*,

Appellees,

v.

THE HEALTH AND HOSPITALS GOVERNING COMMISSION *et al.*,

Appellants.

MR. CHIEF JUSTICE GOLDENHERSH delivered the opinion of the court:

Plaintiffs, as officers and representatives of two unions, representing the employees of hospitals under the control of defendant, the board of commissioners of Cook County (Board), brought this action in the circuit court of Cook County against the Board and its members seeking specific performance of two election agreements entered into by the Board's predecessor, the Health and Hospitals Governing Commission of Cook County (Commission). The circuit court allowed defendants' motions to dismiss the actions. Plaintiffs appealed, the appellate court reversed (91 Ill. App. 3d 1104), and we granted leave to appeal. The facts are adequately set forth in the appellate court opinion and will be reviewed here only to the extent necessary to discuss the issues.

In two "election agreements" executed by the Commission and the unions represented by plaintiffs it was agreed that secret-ballot elections would be held to determine whether a majority of the employees in designated units at defendants' hospitals wished to be represented by a union. The first of these agreements was executed in 1971, and apparently several bargaining agreements were subsequently entered into between that union and the Commission. The agreement with the second union was entered into in 1979, and no bargaining agreement was ever entered into as the result of that election. Under the provisions of section 10 of the County

Hospitals Act (Ill. Rev. Stat., 1980 Supp., ch. 34, par. 5020), effective November 30, 1979, the Board took over the operation of the hospitals. Section 10 in pertinent part provides: "[a]ll rights, duties and obligations of the Commission shall become the rights, duties and obligations of the Board of Commissioners."

In reversing the judgments of the circuit court dismissing the actions the appellate court held that the contracts were not terminable at will and that the agreements were enforceable against the Board. It held that the statute transferring jurisdiction over the county hospitals from the Commission to the Board effected the transfer of the Commission's obligations under these election agreements.

This record presents no question of the enforcement of specific contractural provisions concerning wages, hours, conditions of employment, or which disputes may properly be submitted to arbitration. The relief sought by plaintiffs in these actions is that the Board be ordered "to bargain in good faith concerning wages, hours and working conditions" of certain of its employees and "to submit all unresolved negotiation issues to an impartial fact finder." The narrow question presented is whether, because section 10 of the County Hospitals Act provides that the duties and obligations of the Commission shall become the duties and obligations of the Board, the defendants can be required to negotiate in accordance with the prayer of the complaints.

Although much of the appellate court opinion was devoted to determining whether the election agreements were of perpetual duration and therefore terminable at will, or whether they contained ascertainable points of termination, we do not reach these issues. If the agreements are construed to be of perpetual duration, they were terminable at will and defendants were free to terminate them. Assuming, *arguendo*, that the provisions for termination upon the unions' loss of majority repre-

sentation of the employees constituted an ascertainable point of termination so as to preclude construing the agreements to be of perpetual duration, we are of the opinion that the agreements are nevertheless unenforceable.

The agreements imposed upon the Commission only the duty to bargain in good faith. The only intended result of such bargaining is the execution of an agreement covering the compensation, benefits and working conditions of the affected employees. Whether its source is the Constitution (Ill. Const. 1970, art. VII), the Cook County commissioners' act (Ill. Rev. Stat. 1979, ch. 34, par. 909) or the County Hospitals Act, the power to fix compensation, benefits and working conditions requires the exercise of the Board's discretion.

This court has held that a public body may not delegate a discretionary public responsibility with which it is charged. (*Board of Trustees* v. *Cook County College Teachers Union, Local 1600* (1979), 74 Ill. 2d 412; *Board of Trustees* v. *Cook County College Teachers Union, Local 1600* (1976), 62 Ill. 2d 470; *Illinois Education Association* v. *Board of Education* (1975), 62 Ill. 2d 127.) Although the courts have enforced collective bargaining agreements within the scope of those limitations, we find no authority in statutory or case law which supports the position that a public body can be ordered to negotiate such an agreement. Indeed, under the National Labor Relations Act, a State or local governmental entity has the unequivocal right to refuse to enter into a collective bargaining agreement with its employees.

For the reasons stated the judgment of the appellate court is reversed and the judgments of the circuit court are affirmed.

Appellate court reversed;
circuit court affirmed.

MR. JUSTICE SIMON, dissenting:

I dissent for the reasons stated by the appellate court as well as the reasons stated in my dissent in *Board of Education* v. *Chicago Teachers Union, Local 1* (Docket No. 54274, also filed today), and add the following.

The Health and Hospitals Governing Commission, in agreeing to bargain with the unions, did not surrender its discretion to set the terms of employment. No terms would become effective until the Commission approved them, and the Commission did not have to agree to anything not to its satisfaction. If bargaining broke down, the Commission was free to do as it pleased. There was no more delegation of a public duty (here the Commission's duty to exercise discretion to set the terms of employment) than there was in the recent case of *Metropolitan Sanitary District* v. *Village of Romeoville* (1981), 86 Ill. 2d 213. There, this court upheld a contract by which the sanitary district promised to perform Romeoville's legal duty to maintain a bridge. One way for Romeoville to discharge that duty was to have the sanitary district do it for them. If the sanitary district failed to maintain the bridge properly, Romeoville would have to do so itself; the contract did not absolve it of its duty to the public to maintain the bridge; but it was a proper way of arranging a method by which that duty would be fulfilled. Likewise, the hospitals commission's contracts did not divest it of its duty or ability to exercise discretion, but simply established a procedure, collective bargaining, for the preliminary task of generating a proposal. *Littleton Education Association* v. *Arapahoe County School District, No. 6* (1976), 191 Colo. 411, 553 P.2d 793.

The County Hospitals Governing Commission Act provided:

> "The Commission • • • may contract with one or more responsible public or non-profit corporations, hospitals, or health care facilities • • • for the opera-

> tion of any hospital • • • and for the provision of any • • • health • • • services which the county • • • may be required or authorized by law to provide, and the Commission may contract for any other service for the convenience of its operations as it may deem advisable." (Ill. Rev. Stat. 1977, ch. 34, par. 5022.)

In view of this statutory invitation for the Commision to farm out practically all its functions, I believe the undertaking in the contract to bargain collectively with hospital employees, with the Commission retaining ultimate discretion and control, was within the Commission's power and not against public policy. The contract was valid, and the county board, as successor to the hospitals commission, is bound by it under the County Hospitals Act of 1979, which provided a clear transfer of "[a]ll rights, duties and obligations" of the Commission to the Board (Ill. Rev. Stat., 1980 Supp., ch. 34, par. 5020).

ILLINOIS SUPREME COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

Robert H. Gillespy
Clerk

January 29, 1982

Mr. Joel A. D'Alba
Attorney at Law
228 N. LaSalle St., S#1900
Chicago, IL 60601

No. 54544 - Donald Peters, et al., appellees, vs. Health and Hospitals Governing Commission, et al., appellants. Appeal, Appellate Court, Third District.

The Supreme Court today denied the petition for rehearing in the above entitled cause. Certain changes have been made in pages 3 and 4 of the opinion. Please substitute the enclosed pages in the copy of the opinion previously forwarded to you.

Very truly yours,

/s/ Robert H. Gillespy
Clerk of the Supreme Court

APPENDIX B

Second Division
December 22, 1980

80-1448)
80-1629)

DONALD PETERS AND ROBERT SIMPSON, INDIVIDUALLY, AND AS PRESIDENT AND RECORDING SECRETARY, RESPECTIVELY, OF WAREHOUSE, MAIL ORDER, OFFICE, TECHNICAL AND PROFESSIONAL EMPLOYEES, LOCAL 743, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, etc., et al.

Plaintiffs-Appellants,

vs.

HEALTH AND HOSPITALS GOVERNING COMMISSION OF COOK COUNTY, AND ITS SUCCESSOR, BOARD OF COMMISSIONERS, COOK COUNTY, etc., et al.,

Defendants-Appellees,

Appeal From The Circuit Court Of Cook County.
Honorable George A. Higgins, Judge Presiding.

and

DONALD PETERS AND IRVING KURASCH, INDIVIDUALLY, AND AS PRESIDENT AND SECRETARY-TREASURER, RESPECTIVELY, OF HOSPITAL EMPLOYEES LABOR PROGRAM OF METROPOLITAN CHICAGO (H.E.L.P!), etc., et al.,

Plaintiffs-Appellants,

vs.

HEALTH AND HOSPITALS GOVERNING COMMISSION OF COOK COUNTY, AND ITS SUCCESSOR, BOARD OF COMMISSIONERS, COOK COUNTY, etc., et al.,

Defendants-Appellees.

Appeal From The Circuit Court Of Cook County.
Honorable Joseph M. Wosik, Judge Presiding.

MR. JUSTICE HARTMAN delivered the opinion of the court:

In consolidated appeals, plaintiffs, union officers of two different unions and their unions, appeal from dismissal of their separate complaints which sought specific performance of their individual collective bargaining election agreements in actions before two different chancellors in separate proceedings. They identify the issues on appeal as whether an election agreement with a public employer purporting to create collective bargaining obligations, which assertedly terminate upon certain events, can be enforced when neither event has occurred; and, whether a public employer succeeding to the rights, duties and obligations negotiated by its predecessor, another public employer, is obligated to comply with the terms of that collective bargaining agreement. The issues must be determined in the affirmative for the reasons set forth below and the orders of dismissal are reversed.

Plaintiffs in case number 80-1448 are Donald Peters and Robert Simpson, individually, and as president and recording secretary, respectively, of the Warehouse, Mail Order, Office, Technical and Professional Employees, Local 743, International Brotherhood of Teamsters ("Local 743" and, alternatively, "union"). In case number 80-1629 plaintiffs are Donald Peters and Irving Kurasch, individually, and as president and secretary-treasurer, respectively, of the Hospital Employees Labor Program of Metropolitan Chicago ("H.E.L.P!" and, alternatively, "union"). Defendants in each case are Health and Hospitals Governing Commission of Cook County ("Commission") and the Board of Commissioners of Cook County ("County Board").

From the facts set forth in the respective verified complaints, which for the purposes of the motions to dismiss must be deemed true, together with all reasonable inferences which may be drawn therefrom (*Browder* v. *Hanley Dawson Cadillac Co.* (1978), 62 Ill. App. 3d 623, 379 N.E.2d 1206; *Chicago Teachers Union* v. *Board of*

Education of City of Chicago (1973), 14 Ill. App. 3d 154, 301 N.E.2d 833), it appears that on August 6, 1971, Local 743 and the Commission, which had been established in 1969 pursuant to statute (Ill. Rev. Stat. 1969, ch. 34, par. 5011, *et seq.*), signed a collective bargaining agreement providing for an election by secret ballot to determine whether a majority of the Commission's security officers employed at Cook County Hospital chose to be represented by that union. The election was won by Local 743, which since that time has continuously represented those officers for the purpose of negotiating wages, hours and working conditions and administering the collective bargaining agreement. Three consecutive 3-year agreements were so negotiated and administered, the last one expiring in December, 1979 by its own terms.

On November 30, 1979, by statute (Supp. to Ill. Rev. Stat. 1979, ch. 34, par. 5020), the County Board assumed control of and was authorized to exercise all rights, duties and powers which theretofore had been exercised by the Commission. The County Board, however, refused to negotiate with Local 743 with regard to any further collective bargaining agreements. This refusal precipitated the suit for specific performance in number 80-1448, which was filed on March 26, 1980.

In number 80-1629, an election was held pursuant to agreement between the Commission and H.E.L.P! in May, 1979, this time involving the question of whether a majority of the Commission's Cook County and Oak Forest Hospitals' technical employees wished to have H.E.L.P! represent them. The secret ballot election held on June 13, 1979 resulted in H.E.L.P!'s having been so chosen. Between August and November, 1979 the Commission and H.E.L.P! embarked upon negotiations concerning wages, hours and working conditions resulting in agreement to certain items and leaving others for further negotiation. After December 1, 1979, the County Board refused to continue those negotiations, and refused to submit the impasse to arbitration. H.E.L.P! thereafter, on April 2, 1980, filed its complaint for specific performance.

The election agreements in each case provided that if the unions establish through the elections that they represent a majority of the employees covered in each agreement, the Commission will bargain in good faith concerning wages, hours and working conditions, in exchange for the unions' agreements not to strike or permit slowdowns, work stoppages or picketing during any term of such an agreement or pending resolution of collective bargaining negotiations. Where disagreement between the Commission and the unions should ensue after a reasonable period of negotiations, either party is given the right to refer unresolved matters to a fact finder to be selected by the parties or through the American Arbitration Association. The election agreement itself, in each case, thus contains the respective rights and obligations of the parties to negotiate and bargain in good faith for subsequent agreements which would govern the actual wages, hours and work conditions. Neither require that a contract actually be consummated as to these factors. No specific termination date was provided in either election agreement.

Each complaint prayed for specific performance of the agreement therein involved, for an order compelling the County Board to bargain in good faith and to submit unresolved issues to an impartial fact finder. The motions to dismiss filed by the County Board were granted in each case, from which each appeal proceeds, consolidated in this court because of the similarity of the issues to be resolved.

I.

The principal issue centers around the language of the election agreements insofar as they provide, as the unions claim, or fail to provide, as the County Board claims, any recognizable bases for termination. If they do, they may be deemed sufficiently definite to support the proposed actions for specific performance. If not, they may may be regarded as perpetual in duration and, therefore, under Illinois law, terminable at will. (*Joliet*

Bottling Co. v. *Joliet Citizens' Brewing Co.* (1912), 254 Ill. 215, 98 N.E. 263; *Donahue* v. *Rockford Showcase & Fixture Co.* (1967), 87 Ill. App. 2d 47, 230 N.E.2d 278; *Schoen* v. *Caterpillar Tractor Co.* (1968), 103 Ill. App. 2d 197, 243 N.E.2d 31.) An agreement construed by the parties as possessing cognizable events upon which termination may occur, however, is not perpetual and terminable at will and will be upheld even in the absence of a specified termination date. *Consolidated Laboratories, Inc.* v. *Shandon Scientific Co.* (7th Cir. 1969), 413 F.2d 209; *Donahue* v. *Rockford Showcase & Fixture Co., supra; W. P. Iverson & Co.* v. *Dunham Mfg. Co.* (1958), 18 Ill. App. 2d 404, 152 N.E.2d 615.

The unions contend that the agreements' primary obligations to bargain in good faith and refrain from economic actions contain ascertainable termination points upon the occurrence of either of two events: (1) the failure of the parties to comply with an arbitration award; or (2) the unions' loss of status as representatives of majorities of the affected employees.[1] The County Board denies that either of those events constitutes a termination point and claims that no termination event actually exists or can be identified in the election agreements. We disagree.

The County Board's contention is based upon the fact that the termination point of noncompliance with an arbitrator's decision contains within it only an option to terminate the agreement. Therefore, it reasons, an aggrieved party may choose to overlook this refusal to

[1] The majority status could be tested, under the agreements, by employees actions seeking to decertify the unions or by the Commission, if it had objective evidence upon which to question the unions' majority position. The latter action could be sought by the Commission either upon termination of a collective bargaining agreement or one year from the date the union had been certified. If a union lost an election by reason of an employees' or the Commission's action, the obligation to bargain with it would thereby end.

comply with the arbitrator's decision and elect to continue the relationship, thereby preventing this provision from ever operating as an authentic termination event. No authority is cited in support of this proposition. An option to cancel, however, does not necessarily destroy mutuality of obligation or the validity of a contract. (*Peck* v. *Stafford Flower Mills Co.* (8th Cir. 1923), 289 F. 43, 45; *Mayo* v. *American Malting Co.* (4th Cir. 1914), 211 F. 945; *W. P. Iverson & Co.* v. *Dunham Mfg. Co., supra.*) Arguments to the effect that options may never be exercised when breaches occur sink into the same conjectural quicksand as assertions that breaches themselves may never occur. Such speculative assumptions cannot obscure the presence of otherwise ascertainable points of termination, particularly where, as here, the option to cancel is conditioned upon a voluntary act of the other party. 1A Corbin, Contracts, Sec. 165 (1963).

The County Board also disputes the validity of the loss of union majority representation as an ascertainable point of termination, claiming that this is an event over which neither party has any control, citing *Consolidated Laboratories, Inc.* v. *Shandon Scientific Co., supra,* which held that the contract there was not for an indefinite period of time because it was "• • • terminable upon the occurrence of the two specified events, both of which are in the sole control of [the defendants]." (413 F.2d at 212.) From this language, the County Board infers that absent control by either the union or the County Board of the events in the instant contracts, no legitimate termination event is here presented. Control of termination events by either party has not been deemed requisite to the avoidance of terminable at will contract status, however; For example, in *Stein* v. *Isse Koch and Co.* (1953), 350 Ill. App. 171, 112 N.E.2d 491, the terminable event was that plaintiff's discharge from the army, over which neither party had control. In *Donahue* v. *Rockford Showcase & Fixture Co., supra,* the terminable event was the declination of "shipments" generated by the salesman's orders to a level below $25,000 in any one year, which was not controllable by either

party. And in *In the Matter of Commodity Merchants, Inc.* (7th Cir. 1976), 538 F.2d 1260, 1263, the "unsatisfactory financial condition" of a trader's customer was identified as a termination point, determinable by reference to commercial standards. *See, e.g.*, Ill. Rev. Stat. 1975, ch. 26, par. 2-609.

The preceding result would be the same even if it were to be assumed, *arguendo*, that control is a necessity. Union involvement in labor relations is more than simply winning an initial representation election. Such organizations typically must continue their efforts to maintain their majority status by providing adequate representational services during grievance procedures, protesting discharges and presenting persuasive programs with respect to wages, hours and conditions of work. To the extent that a union fulfills, or fails to meet such obligations, it may be argued, as the unions do in this case, that it "controls" its right to continue representation since its failure to do so can result in decertification proceedings under the contracts, which may be initiated by its membership or by the employer. An analogy to such a circumstance can be made to the requirement that a business maintain its existence (*W. P. Iverson & Co.* v. *Dunham Mfg. Co., supra*), or continue to market its products (*Warner-Lambert Pharmaceutical Co.* v. *John J. Reynolds, Inc.* (S.D.N.Y. 1959), 178 F. Supp. 655, *aff'd* (2d Cir. 1960), 280 F.2d 197, and cases therein collected). It is true that the unions, acting rationally in their own best interests, as well as in the interests of those it represents, can be expected to adequately represent its membership just as a business marketing a product upon which it pays royalties can be expected to continue to do so; yet, they may also fail for a number of reasons, including lack of ability, capacity or need, which will result in termination of the contract.

From the foregoing we conclude that refusal to abide by an arbitrator's decision, notwithstanding the option to continue the relationship in the face of such refusal,

and the lack of union majority representation, are sufficiently cognizable termination events so as to remove the contracts involved in the present cases from the indefiniteness characteristic of contracts in perpetuity and terminable at will.

II.

The unions next argue that the obligations of the Commission became the obligations of the County Board, relying upon section 10 of the County Hospitals Act (Supp. to Ill. Rev. Stat. 1979, ch. 34, par. 5020, effective November 30, 1979). That provision, in pertinent part, reads as follows:

> "The Board of Commissioners shall have and exercise all rights, powers and duties heretofore exercised by the Commission. All books, records, papers, documents, property, real and personal, unexpended appropriations and pending business in any way pertaining to the rights, powers and duties of the Commission shall be transferred and delivered to the Board of Commissioners. All rights, duties and obligations of the Commission shall become the rights, duties and obligations of the Board of Commissioners."

Included among the "rights, duties and obligations" assumed by the County Board, it is maintained, are those contained in the collective bargaining election agreements negotiated by the Commission. Because the Commission had the legal authority to enter into such contracts, the unions contend, citing *Tobin* v. *Health and Hospitals Governing Comm'n of Cook County* (1978), 66 Ill. App. 3d 564, 384 N.E.2d 77, which obligated the Commission to bargain in good faith with the unions concerning wages, hours and working conditions, by operation of statute those obligations have been transferred to the County Board. The unions rely upon *People ex rel. Housing Authority of the City of East St. Louis* v. *Hursey* (1956), 7 Ill. 2d 537, 131 N.E.2d 483, and claim the same rights

against the County Board and remedies available to them by reason thereof as they possessed in relation to the Commission.

The County Board counters with the contention that it has the unequivocal right to refuse to enter into collective bargaining agreements with its employees, relying upon section 2(2) of the National Labor Relations Act, as amended (29 U.S.C. sec. 152(2)), *Abood* v. *Detroit Board of Education* (1977), 431 U.S. 209, 52 L. Ed. 2d 26, 97 S. Ct. 1782, and *City of Chicago* v. *Confederation of Police* (1976), 427 U.S. 902, ... L. Ed. 2d ....., 96 S. Ct. 3186. The County Board asserts that to force it to bargain collectively against its decision not to do so is contrary to public policy. It reads *Tobin* v. *Health and Hospitals Governing Comm'n, supra,* as recognizing the County Board's right to exercise its official judgment and discretion in such matters. Since it chooses to exercise that judgment and discretion in this case by refusing to bargain with unions, the County Board maintains that a decision requiring it to do so would be an abridgement of its rights granted to it under its charter. We cannot agree.

The statutory language transferring jurisdiction of County Hospital affairs from the Commission to the County Board is clear, unambiguous and unequivocal. The terms "rights, duties and obligations" to be "transferred and delivered to the Board of Commissioners," require no legalistic gymnastics in order to construe them to include those which emanate from a contract. The supreme court in *People ex rel. Housing Authority* v. *Hursey* construed statutory language requiring the "• • • turn over of all its property and obligations • • •" (Ill. Rev. Stat. 1953, ch. 67½, par. 17(b) (2)) as meaning "[u]nder such circumstances, any person with contract rights against the County Authority [the transferor] would have the same rights against the successor city authority [the transferee], with the same remedial rights and the same property interests and credit supporting the contract." (7 Ill. 2d at 544.) Similarly, by virtue of sec-

tion 10 in the present case, the unions have been given the same contractual rights against the County Board, together with the same remedies, as they would have had against the Commission.

Further, the circumstances presented in this case are little different, with respect to residual rights and obligations, from those presented by a merger of two or more other types of governmental units, in which case the general rule provides that existing contracts and indebtedness of the unit to be annexed become the contracts and indebtedness of the surviving unit, unless otherwise provided by statute. (*People ex rel. Moore* v. *Chicago, B. & Q. R.R.* (1953), 414 Ill. 419, 429, 111 N.E.2d 509; *Kocsis* v. *Chicago Park District* (1935), 362 Ill. 24, 198 N.E. 847.) There is no suggestion in the language of section 10 that the general rule should not be followed in the case at bar. Units of government have been compelled to abide by their contractual obligations notwithstanding public policy discretionary powers which initially might have been exercised in other ways under different circumstances. (*Arlington Heights Nat'l Bank* v. *Village of Arlington Heights* (1966), 33 Ill. 2d 557, 213 N.E.2d 264; *Wall* v. *Chicago Park District* (1941), 378 Ill. 81, 37 N.E.2d 752; *Chalstran* v. *Board of Education of Township High School District* 13 (1910), 244 Ill. 470, 91 N.E. 712.) Our ruling in no way interferes with discretionary public policy decisions to be made with regard to this subject area when exercised by the County Board *ab initio*. *Tobin* v. *Health and Hospitals Governing Comm'n, supra.*

The remaining arguments relative to constitutional prohibitions against impairment of contracts need not be considered in view of the result mandated by the foregoing discussion. The dismissals of the complaints and actions seeking specific performance were in error and must be reversed and remanded for further proceedings consistent with the views herein expressed.

Reversed and remanded.

STAMOS and DOWNING, JJ., concur.

APPENDIX C

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
(County) Department Chancery (Division)

DONALD PETERS, LOCAL 743, et al.,
Plaintiffs,

v.

COOK COUNTY BOARD OF COMMISSIONERS,
Defendant.

NO. 80 CH 2047

ORDER

This matter coming on to be heard on defendant's Motion to Dismiss and plaintiffs' Motion for Preliminary Injunction, the motions having been fully briefed, the parties being present and the Court fully advised after oral argument.

THE COURT FINDS, that the recognition-election agreement entered into between the plaintiffs and the Health and Hospitals Governing Commission cannot be enforced against the defendant Cook County Board of Commissioners. Without deciding whether the collective bargaining election agreement is an enforceable contract, this Court FINDS that under existing law, including the County Hospital Act, Ill. Rev. Stat. ch. 34, §5020, the Board of Commissioners of Cook County, as a governing body, cannot be compelled to honor the collective bargaining election agreement.

THE COURT THEREFORE FINDS, that the plaintiffs' motion for preliminary injunction is denied and defendant's motion to dismiss is granted.

/s/ George A. Higgins
Judge

Name: BERNARD, CAREY,
State's Attorney of Cook County

By: John A. Dienner, III Assistant State's Attorney

Attorney for Defendant

Address 500 Richard J. Daley Center

City Chicago, Illinois 60602

Telephone 443-7940

Morgan M. Finely, Clerk Of The Circuit Court
Of Cook County

ENTER: MAY 16, 1980

APPENDIX D

ELECTION AGREEMENT

This Agreement entered into by and between the HEALTH AND HOSPITALS GOVERNING COMMISSION OF COOK COUNTY (hereinafter referred to as the "Commission"), and LOCAL 743, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and LOCAL 46, SERVICE EMPLOYEES INTERNATIONAL UNION (hereinafter referred to as the "Unions"):

1. A secret ballot election will be held to determine whether or not a majority of the employees in the hereinafter described unit at Cook County Hospital (hereinafter referred to as the "Hospital") wish to be represented by a Union. A majority shall be defined as in excess of fifty (50) per cent of the employees eligible to vote; provided that if no Union obtains such a percentage, and fifty (50) per cent of the eligible employees do not vote against such representation, a second election between the two voting alternatives receiving the largest number of votes in the first election will be held, which will be final and binding without any further elections. A majority in the second election shall be defined as in excess of fifty (50) per cent of the employees voting in the election, provided a representative number of employees votes in the election. The Commission and the Unions will each do everything possible to encourage employees in the unit to vote in the election.

2. The unit will be all security officers, but excluding supervisors and all other employees.

3. The election will be administered by Zweiback Enterprises, Inc., 603 Main Street, Evanston, Illinois, which shall be authorized, after consultation with rep-

resentatives of the parties, to finally decide upon all administrative details of the election, such as the number of voting booths required, the color of the ballot to be used in the election (which shall not be made known to the parties until the commencement of the voting), the identification of voters, the number and qualification of observers and similar items. The conduct of the election, and the campaign conduct of the parties with respect to the election which occurs after the execution of this Agreement, shall be governed by the rules and standards applied by the National Labor Relations Board in connection with representation elections conducted by that agency, including the rules and standards for protesting objectionable conduct and irregularities and challenging ballots. Final decisions concerning any disputed aspects of the election, and all disputes concerning objectionable conduct, irregularities and challenged ballots, shall be made by an impartial arbitrator selected by the Commission and the Unions, either by agreement or from a panel of at least seven (7) names to be submitted by the American Arbitration Association. In the event that either party is dissatisfied with all the names appearing on this panel, such party may request forthwith a second panel from which an impartial third party must be chosen. The cost of the election, including the fees of the arbitrator, shall be borne equally by the parties.

4. The election will be held on the Hospital premises on August 11, 1971. Persons eligible to vote shall be all full-time and regular part-time employees within the unit described in paragraph 2 herein, and employed during the payroll period ending July 11, 1971, and who remain and are still employed in the unit on the date of the election. The Commission shall furnish to the Unions, upon execution of this Agreement, an election eligibility list containing the full names and addresses of all eligible voters as last appear on the Commission's records, including an indication of any employees who will be on vacation on the day of the election.

5. If, in the opinion of the arbitrator, it is necessary to do so, he may hold a hearing for the purpose of determining any issues, including objections and challenges, which may arise.

6. Following the counting of ballots and a determination that the election was properly and validly conducted, the arbitrator shall certify the results of the election to the Commission and the Unions. In the event that the arbitrator shall determine that the election was not properly and validly conducted, or that one or both of the parties had engaged in objectionable conduct, the arbitrator is empowered to direct a second election at such time as he may deem appropriate, and the arbitrator shall have the further authority to direct either or both of the parties to give notice to eligible voters of the reasons for the holding of a second election.

7. If such certification demonstrates that all the Unions have lost the election, the Unions and the Commission agree that no further election may be held at the Hospital for two (2) years from the date of such certification of the results of the election; and if the Commission should agree with any other labor organization to conduct an election in a substantially similar bargaining unit, the Unions will be given an opportunity to be placed on the ballot. If such certification demonstrates that a Union has won the election, the parties will proceed forthwith to negotiate in good faith with the Union and enter into a contract covering the terms and conditions of employment for the employees in the unit.

8. The Unions recognize that the Commission has the full authority and responsibility for directing its operations and determining policy, and that it reserves these rights, powers, authorities, duties and responsibilities. By way of example, the Unions therefore agree that should any of them win the election, they will not in any way attempt to interfere with or restrict the Commission's flexibility in deciding to purchase or use its

own personnel, the development of new classifications, the elimination or consolidation of classifications, the use and development of new methods, procedures, or equipment, the assignment and direction of personnel, the training of personnel and similar matters. The Unions also recognize that this Agreement does not empower the Commission to do anything that it is prohibited from doing by law, and that the Commission is not obligated to provide any economic benefits or comply with the related provisions of any subsequently arrived at contract in the absence of an applicable appropriation by the Board of Commissioners of Cook County.

9. If the parties are unable to agree upon a contract after a reasonable period of negotiations and an impasse having been reached, either party may refer any unresolved matters to a fact-finder to be selected by agreement of the parties or through the American Arbitration Association in accordance with its rules. The fact-finder shall meet with the parties, hold hearings and make findings of fact and recommend terms of settlement, which terms shall be advisory only. The fact-finder's report shall be submitted in writing to the parties, and the fact-finder shall decide whether it is to be released to the public. The cost of such proceeding shall be shared equally by the parties.

10. The Unions agree that there will be no work stoppages, strikes, slowdowns or picketing of any kind at the Hospital, or for any reason, pending fact-finding as provided in paragraph 9 hereof. The Commission agrees that there will be no lockouts pending fact-finding as provided in paragraph 9 hereof.

11. The Unions agree that should any of them win the election, any contract arrived at between the Commission and the Union at any time in the future will contain a provision prohibiting work stoppages, strikes, slowdowns, or picketing of any kind or for any reason at the Hospital (including the honoring of other unions' picket lines) during the term of the contracts. The contract

shall further provide that all disputes arising out of the terms and conditions of such contract shall be submitted to an impartial arbitrator to whom all of the facts will be presented, and whose award with respect to such matters will be final and binding upon both parties to the extent permitted by law and within the power and authority of the Commission. Such arbitrator shall be selected by agreement or from a panel of at least seven (7) names submitted by the American Arbitration Association. In the event that either party is dissatisfied with the names appearing on such panel, such parties may request a second panel, from which an impartial arbitrator must be chosen. The arbitrator thus selected shall have no authority to vary the terms of any contract. The fees and expenses of the arbitrator shall be borne equally by the parties. Such contract will also provide that any and all employees actually engaging in any work stoppage, strike, slowdown or picketing in violation of these prohibitions may be suspended or discharged at the discretion of the Commission, and that there can be no resort by the employee(s) or the Union, as a result of such suspension or discharge, to any grievance or arbitration procedure, except with respect to the question of whether or not the employee(s) shall have engaged in the prohibited conduct. Nothing in this Agreement shall be construed so as either to interfere with or impede or diminish in any way work stoppages, strikes, slowdowns or picketing upon the termination of any collective bargaining agreement, provided that the Union shall give at least ten (10) days' written notice of any such economic action to be taken at the termination of any contract.

12. The Commission agrees that should any Union win the election, any contract arrived at between the Commission and the Union at any time in the future will contain a provision prohibiting lockouts of any kind or for any reason at the Hospital, and further providing that all disputes shall be resolved by arbitration in the manner set forth in paragraph 11 hereof.

13. The arbitrator provided for in paragraph 11 hereof shall have the authority to enjoin any work stoppage, strike, slowdown, picketing or lockout, and shall have the authority to order specific performance of any such provision in any contract between the parties hereto: [*and* any and every such contract between the Commission and the Union shall so provide.] In the event of a work stoppage, strike, slowdown or picketing, the Commission may pursue any legal or equitable remedy otherwise available in lieu of or in addition to arbitration, and it will not be a condition precedent to pursuit of any judicial remedy that any grievance or arbitration procedures be first exhausted.

14. All disputes concerning the interpretation, application or violation of this Agreement also shall be immediately submitted to arbitration as provided in paragraph 11 hereof. If the arbitrator finds that a violation of this Agreement has occurred, he shall determine the method and time within which the violating party must attain compliance with the provisions of this Agreement. If the violating party does not attain compliance thereafter in accordance with such determination of the arbitrator, the other party shall have the option of declaring this entire Agreement null and void, thereby terminating any existing relationship between the parties.

15. If a Union wins the election, the Commission may question the continuing status of the Union as the representative of a majority of the employees in the unit, or employees may seek to decertify the Union, upon the termination of any subsequent contract between the parties, or one (1) year from the date of certification of the Union, whichever is longer. The Commission, however, may seek a new election hereunder only if it has objective evidence to question the Union's majority status, as required by the National Labor Relations Board. In such an event, the arbitrator shall direct an election to be conducted in substantially the same manner and under substantially the same terms and conditions as provided

for in the case of the election provided for at this time, and the consequences provided in this Agreement between the parties with respect to the results of that election shall be applicable with respect to the election herein provided for.

WHEREFORE, the parties have signed this Agreement on the 6 day of August, 1971.

Health And Hospitals Governing Commission Of Cook County

By /s/ .....
Associate Director of Industrial Relations

Local 743, International Brotherhood Of Teamsters, Chauffeurs, Warehousemen And Helpers Of America

By /s/ .....
Trustee and Director of Organizing

Local 46, Service Employees International Union

By /s/ .....
President

APPENDIX E

REVIEW OF STATE STATUTES PROVIDING FOR COLLECTIVE BARGAINING

Alaska:
Alaska Stat. §§ 14.20.056(a), 23.40.100(b);

California:
Cal. Gov't Code §§ 3573, 3507, 3520.5, 3544 (Deering);

Connecticut:
Conn. Gen. Stat. Ann. §§ 5-271(b), 7-468(b), 10-153(b)(e) (West);

Delaware:
Del. Code Ann. tit. 10 § 1306, 14 § 4004;

District of Columbia:
D.C. Code Ann. § 1-610.10

Florida:
Fla. Stat. Ann. § 447.307 (West);

Georgia:
Ga. Code Ann. § 54-1304;

Hawaii:
Hawaii Rev. Stat. § 89-8

Idaho:
Idaho Code §§ 33-1273, 44-1803

Indiana:
Ind. Code § 20-7.5-1-10 (West)

Iowa:
Iowa Code Ann. §§ 20.14-20.15 (West)

Kansas:
Kan. Stat. Ann. §§ 72-5415, 75-4327;

Kentucky:
Ky. Rev. Stat. Ann. § 345.030 (Baldwin)

Louisiana:
La. Rev. Stat. Ann. § 23:890D (West)

Maine:
Me. Rev. Stat. Ann. tit's 26 §§ 967, 979-F, 1025;

Maryland:
Md. Educ. Code Ann. § 6-407
Baltimore City Code Art. I § 115

Massachusetts:
Mass. Ann. Laws Chap. 150E § 4 (Michie/Law Co-op)

Michigan:
Mich. Stat. Ann. § 17.455 (11)

Minnesota:
Minn. Stat. Ann. § 179.65 (West)

Missouri:
Mo. Ann. Stat. §§ 105.510, 105.520 (Vernon)

Montana:
Mont. Code Ann. §§ 39-31-208, 39-32-107

Nevada:
Nev. Rev. Stat. § 288.160

New Hampshire:
N.H. Rev. Stat. Ann. § 273-A:10

New Jersey:
N. J. Rev. Stat. Ann. § 34:13A.5.3 (West)

North Dakota:
N.D. Cent. Code § 15-38.1-11

Oklahoma:
Okla. Stat. Ann. tit. 11 § 51-103 (West)
tit. 70 § 509.2 (West)

Oregon:
Or. Rev. Stat. § 243.666

Pennsylvania:
Pa. Stat. Ann. tit. 43 § 1101.606 (Purdon)

Rhode Island:
R.I. Gen. Laws §§ 36-11-1; 28-9.4-4; 28-9.3-3; 28-9.1-5;
" " " " 28-9.2-5; 28-9.5-5;

South Dakota:
S. D. Codified Laws Ann. § 3-18-3

Texas:
Tex. Civil Stat. Labor § 5154c-1 (Vernon)

Tennessee:
Tenn. Code Ann. § 49-5504

Utah:
Utah Code Ann. § 34-20a-4

Vermont:
Vt. Stat. Ann. tit. 21 §§ 1583, 1723, 1724
" " " tit. 16 § 1991

Washington:
Wash. Rev. Code Ann. §§ 41.56.080, 41.59.090, 28B.100 (11), 28B.52.030

Wisconsin:
Wis. Stat. Ann. § 111.83 (West); § 111.70

Wyoming:
Wyo. Stat. § 27-10-104